Supreme Court, U.S.
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No. 01-550

In The

Supreme Court of the United States

SUBMERSIBLE SYSTEMS, INC.,

Petitioner,

versus

PERFORADORA CENTRAL, S.A. de C.V.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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LIST OF PARTIES

1. Submersible Systems, Inc.
2. Perforadora Central, S.A. de C.V.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, petitioner has no corporate parent, and no portion of its stock is owned by a publicly held company.

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REPLY TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

Submersible Systems, Inc. ("SSI") respectfully submits this reply to address two issues raised in the response of Perforadora Central, S.A. de C.V. ("Central") to SSI's petition for writ of certiorari: first, SSI is asking this Court to decide three important legal issues, not to review questions of fact; and, second, U.S. courts can and should exercise *quasi in rem* jurisdiction under Rule B when the district court retains constructive control over the *res*; when the *res* remains within the jurisdiction of the court and when the court has exercised personal jurisdiction over the defendant, regardless of whether the *res* has been formally attached.

I. SSI Seeks this Court's Ruling on Three Important Legal Issues, Not Questions of Fact.

SSI does not seek a review of facts, but instead presents three important legal issues in its petition, which are appropriate for consideration under the undisputed facts:

1. Is it necessary for federal courts to formally attach property in order to have *quasi in rem* jurisdiction under Rule B? Corresponding to this question, must a maritime claimant pursue an interlocutory appeal of an incorrect Rule B ruling when (1) the trial court retains constructive control over the *res*, (2) there is no practical concern that the *res* will be removed from the jurisdiction before or during trial, and (3) the court has otherwise

exercised personal jurisdiction over the defendant;

2. Does not a maritime defendant subject itself to the personal jurisdiction of the federal court when the defendant admits it is present within the jurisdiction for purposes of Rule B? In this instance, the defendant's representation induced the trial court to decline Rule B jurisdiction; and

3. Is the legal standard for exercising personal jurisdiction under Rule 4(k)(2) more stringent than and constitutionally different from the standard under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), or *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)?

These three legal questions can be considered and resolved on the facts found by the trial court and affirmed by the Fifth Circuit.

II. The Exercise of *Quasi In Rem* Jurisdiction Under the Facts of this Case is Consistent with the Exercise of Jurisdiction in Cases of "Constructive Control" of the *Res* and Allows the District Courts to Resolve Attachment Cases Without the Need of Costly and Multiple Appeals.

Central argues that formal attachment of the *res* is absolutely necessary for Rule B jurisdiction. SSI disagrees. The rigid requirement for formal attachment of the *res* is a vestigial anachronism which has no reasonable application in this case. Contrary to Central's argument that no case law supports SSI's proposition, the following

cases, cited by SSI, support the contention. *Chan v. Society Expeditions, Inc.*, 123 F.3d 1287, 1294, n. 4 (9th Cir. 1997), *cert. dismissed*, 522 U.S. 1100 (1998); *Panaconti Shipping Co., S.A. v. M/V YPAPANTI*, 865 F.2d 705, 707 (5th Cir. 1989); *Cactus Pipe & Supply Co. v. M/V MONTMARTRE*, 756 F.2d 1103, 1107 (5th Cir. 1985); *Continental Grain Co. v. Federal Barge Lines, Inc.*, 268 F.2d 240, 242-3 (5th Cir.), *aff'd* 364 U.S. 19 (1959); *Munks v. Jackson*, 66 F. 571 (9th Cir. 1895). In all of these cases, jurisdiction was exercised although property was not actually seized by the courts.

These decisions are in keeping with the line of authority noted in this Court's opinion in *Republic National Bank of Miami v. U.S.*, 506 U.S. 80, 86-87 (1992), that jurisdiction may be exercised in cases of "actual or *constructive*" control of the *res*. (Emphasis added). This Court has thus recognized that "actual" control or attachment is not required; something less, i.e., "constructive" control allows the exercise of jurisdiction. *See California v. Deep Sea Research, Inc.*, 523 U.S. 491, 496 (1996), and *R.M.S. TITANIC, Inc. v. Haver*, 171 F.3d 943, 964 (4th Cir. 1999) (discussing *in rem* jurisdiction over wrecks). *See also: U.S. v. All Funds on Deposit*, 63 F.3d 148, 153-4 (2nd Cir. 1995); *U.S. v. All Funds in Account*, 141 F.Supp.2d 548, 550-1 (D.D.C. 2001); and *U.S. v. Contents of Account*, ___ F.Supp.2d ___, 2001 WL 1194881 (D.N.J. 2001) (discussing jurisdiction in forfeiture cases involving foreign bank accounts under 21 U.S.C. § 881, which are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims contained within the Federal Rules of Civil Procedure, 21 U.S.C. § 881(b)).

Expounding further, this Court stated that the objective of actual or formal attachment is achieved when

notice was given and jurisdiction was established over the property, so that the judgment would not be considered to be advisory or "useless". *Republic*, 506 U.S. at 87-88, *citing The LITTLE CHARLES*, 26 F. Cas. 979, 982 (No. 15612) (C.C. Va. 1818) (Marshall, C.J.).

All of those elements existed in this case, while the rig was under construction and was incapable of being removed,[1] and where the parties had agreed that the rig would not be moved without prior notice to the plaintiff/petitioner and the trial court. If Central had indicated to the trial court and SSI that it did intend to move the rig, SSI could have moved again to attach the rig. At that juncture, SSI would have filed an interlocutory appeal from an adverse ruling.

The trial court had continuously exercised constructive control over the rig throughout the pre-trial and trial time periods, and its release was secured when Central posted appropriate security. Whether Central posted its security, before or after judgment, to permit the removal of the rig is of no moment. Because (1) the court retained constructive control over the *res*, (2) there was no practical concern that the *res* would be removed from the jurisdiction before or during trial and (3) the court exercised personal jurisdiction over the defendant, there was no need or reasonable basis to require that SSI pursue an interlocutory appeal in this case.

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[1] SSI submits that the drilling rig was the functional equivalent of real property during construction. It was incapable of movement for much of the time. Thereafter, its movement was impeded by order of the court.

The legal issues presented herein are not unique to SSI or this case. Parties routinely avoid unnecessary costs, both to themselves and to the courts, by implementing alternative means of securing property short of formal attachment (e.g., bonds, claims, letters of undertaking, stipulations). The Fifth Circuit's opinion eviscerates parties' ability to secure jurisdiction and security without a costly and unnecessary formal attachment. Further, the Fifth Circuit's opinion requires multiple appeals where none should be necessary.

III. Conclusion

WHEREFORE, for the foregoing reasons and those set forth in its original petition, Submersible Systems, Inc. respectfully prays for a writ of certiorari to the United States Court of Appeals to the Fifth Circuit.

Respectfully submitted,

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